93-234

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1992

In The Matter Of:
ULYSSUS GEORGE WADE,
JOYCE WADE, and
U.G. WADE TRUCKING, INC.,

Debtors-Petitioners.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

Petition for Writ of Certiorari

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61 pp

QUESTIONS PRESENTED FOR REVIEW

1. What constitutes the closing of a Chapter 7 bankruptcy case under Title 11 U.S.C. §350(a)?

2. Does the discharge of a Chapter 7 bankruptcy trustee from his duties constitute a departure from the accepted and usual course for bankruptcy proceedings if the Chapter 7 trustee did not file a final report pursuant to Title 11 U.S.C. §704(9)?

3. Are the Petitioners as individual debtors in bankruptcy entitled to be discharged from this bankruptcy pursuant to Title 11 U.S.C. §727?

LIST OF PARTIES

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and U.G. Wade Trucking, Inc.
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OPINIONS BELOW

The opinion of the United States Court of Appeals For The Seventh Circuit is reported and published, a copy of which is reproduced in the Appendix attached hereto at 1-12, and hereafter cited as "App. 1 ."

JURISDICTION

The opinion of the court of appeals was decided April 14, 1993. App. 1. A petition for rehearing was denied May 21, 1993. App. 26. This petition for writ of certiorari is timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. §1252(1).

RULES INVOLVED

The rules involved, are:

Title 11 U.S.C. §350(a)-

> After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

Title 11 U.S.C. §704(2)(9)-

The trustee shall-

(2) be accountable for all property received.

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

Title 11 U.S.C. §727-

The court shall grant the debtor a discharge, unless- [remainder omitted as unnecessary].

STATEMENT OF THE CASE

The issue presented by this case concerns what legal conditions constitutes the closing of a Chapter 7 bankruptcy case. The statute applied by the court of appeals in this case is Title 11 U.S.C. §350(a) which provides "After an estate is fully administered and the court has

discharged the trustees, the court shall close the case." The 7th Circuit Court of Appeals has decided that the language of §350(a) is "conjunctive" allowing the court to close a Chapter 7 bankruptcy case after the estate is fully administered but without discharging the trustee. App. 6.

Secondly, this petition demonstrates that the opinion of the court of appeals is a far departure from the accepted and usual course for Chapter 7 bankruptcy proceedings.

Finally, this petition shows that the Wades as individuals and debtors in bankruptcy are entitled to further relief in this bankruptcy proceeding.

In 1985, the petitioners (hereafter the "Wades"), and their company U.G. Wade Trucking, Inc., (hereafter the "company"), filed personal and corporate bankruptcy petitions under 11 U.S.C. §701. App. 1.

Upon the bankruptcy filings, Edward B. Hopper, II ("Hopper"), was appointed as the case trustee. App. 10. Hopper resigned or was removed as trustee in November of 1987. The bankruptcy court appointed Neil E. Shook ("Shook") as successor trustee. App. 10.

In September of 1988, Hopper filed a final report" which was later found to be an "interim report" by the court of appeals. App. 10. Shook never filed a final report. App. 10. In late 1989, trustee Shook filed a request to close the bankruptcy case. The district court granted Shook's request to close and made its Entry and Order of January 17, 1990, in which the district court ordered the bankruptcy case closed. App. 17.

In 1990 the Wades attempted to appeal the January 17 order, however, the 7th Circuit dismissed the appeal as untimely, and did not consider the merits of the issues on appeal. App. 4.

Over a year after the entry of the January 17 order closing the bankruptcy case, Shook filed a motion for his discharge as trustee. App. 4.

In its Order of May 30, 1991, the district court granted Shook's motion for discharge from his duties. App. 4. The Wades appealed the May 30 order to the court of appeals which is the appeal from which this petition arises.

In the appeal of the May 30 order, the Wades raised common Chapter 7 bankruptcy issues concerning the propriety of the closing of the bankruptcy case and discharge of the trustee. In particular, the Wades raised primary issues of missing and unaccounted for estate property; contested "privileges" asserted by the trustees to withhold information concerning said estate property; and the failure of the district court to grant the Wades a discharge. The issues were

directed at both the January 17 order and the May 30 order. The court of appeals however determined the issues were directed only at the January 17 order. App. 4-5.

The court of appeals rejected the Wades' issues and affirmed the May 30 order. The court of appeals decided it lacked jurisdiction in this appeal to decide the Wades' issues on the basis that the Wades failed in their previous appeal of the January 17 order, and therefore affirmed the district court's May 30 order. App. 11-12.

On petition for rehearing, the Wades argued that 11 U.S.C. §350(a) contains two co-requisite conditions for closing a Chapter 7 bankruptcy case. The first condition is that the estate must be fully administered. This condition was met by the January 17 order closing the bankruptcy case. The second condition is

that the trustee must be discharged. This condition was met by the May 30 order discharging trustee Shook. App. 14-15. The Wades contend that issues of missing and unaccounted for estate property and asserted "privileges" by the trustees are issues properly considered on appeal from the May 30 order discharging trustee Shook from his duties.

Also on petition for rehearing, the Wades argued that the May 30 order met the second condition of §350(a) that the trustee is discharged before closing the case was met by the May 30 order. The Wades contend that the trustees have a duty to file a final report and account for their administration of the estate, and that issues of missing and unaccounted for estate property and contested "privileges" asserted by the trustees are properly raised on appeal from the May 30 order discharging trustee Shook.

The petition for rehearing was denied by the court of appeals on May 22, 1993. This Petition For Writ Of Certiorari follows.

REASONS WHY THIS PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

This petition presents a special and important question concerning what constitutes the closing of a Chapter 7 bankruptcy case.

This petition further addresses substantial departures by the district court and court of appeals from the accepted and usual course for Chapter 7 bankruptcy proceedings by publishing an opinion in this case thereby setting a precedent which provides there is an exception to 11 U.S.C. §704(9) requiring a trustee to file a final report.

Finally, this petition demonstrates that the Wades are entitled to further relief in this bankruptcy proceeding.

I.

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION CONCERNING 11 U.S.C. §350(a) AND WHAT CONSTITUTES THE CLOSING OF A CHAPTER 7 BANKRUPTCY CASE, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

In this case the court of appeals published an opinion which interprets 11 U.S.C. §350(a). The court of appeals found that "[T]he timing of a bankruptcy's closing has been called a 'nebulous concept'" citing In Re: Korvettes, Inc., 67 B.R. 730, 732 (S.D.N.Y. 1986). App. 6. The "nebulous concept" analogy led the court of appeals to find "[T]he language of Section 350(a) is conjunctive." App. 6. This interpretation of §350(a) given by the court of appeals creates legal authority to close a Chapter 7 bankruptcy

case without meeting both conditions set forth under §350(a).

In doing so, the court of appeals has affected the rights of millions of persons, entities and other parties in interest who are affected by the filing of bankruptcy cases.

However, there is conflict and confusion between the 7th Circuit's interpretation of §350(a) in this case and the interpretation of §350(a) given by other federal courts.

Generally, the present body of case authority interpreting what constitutes the closing of a bankruptcy case is deficient and does not conclusively state exactly what constitutes the closing of a Chapter 7 bankruptcy estate. It is, to say the least, a confusing question of law and one apparently the federal courts experience difficulty with. This is the probable cause for the 7th Circuit to find

the closing of a bankruptcy case to be a "nebulous concept," supra.

Moreover, most of the case authority is dated. However, a principle still relied on today is that an order discharging the trustee is essential to the closing of a bankruptcy case. Pieper's Trustee v. Chevrolet Motor Co., 156 S.W.2d. 131, 288 Ky. 305 (1941). In other cases the federal courts have found that a trustee's final report is a prerequisite to closing a bankruptcy case. Re: Carr, 116 F. 556 (D.C.N.C.-1902). There are times when a bankruptcy estate may be fully administered and yet not closed. Re: Paramount Publix Corp., 82 F.2d. 230 (2nd Cir.-1936). A debtor may be discharged but the estate remains open. Levy v. Schoor, 266 F. 207 (3rd Cir.-1920). A Chapter 7 bankruptcy case cannot, on due process grounds, be closed without notice to creditors. Re: Jewelart, Inc., 71 B.R.

968 15 B.C.D. 991 (B.C.C.D.Cal.-1987). A bankruptcy case cannot be closed without a final meeting of creditors. In Re: Levy, 261 F. 432, 44 Am.Bankr.Rep. 248 (D.C.Pa.-1919). In Re: Stein, 94 F. 124, 1 Am.Bankr.Rep. 662 (D.C.Ind.-1899); In Re: Michel, (95 F. 803, 1 Am.Bankr.Rep. 665 (D.C.Wis.-1899).

However, there is no conclusive decision by this Court interpreting §350(a). Concisely stated, there remains conflicts between the federal courts concerning what constitutes the closing of a bankruptcy case. Consequently, the procedure of the closing of a bankruptcy case varies from case to case.

11 U.S.C. §350(a) is the statute which governs the closing of a bankruptcy case, which is a federal law that affects every debtor who files a bankruptcy petition. Simply put, when a bankruptcy case is

filed, the case must ultimately be closed under §350(a). The United States General Accounting Office ("GAO") predicts that over 1.2 million bankruptcies will be filed in 1993. See, "BANKRUPTCY TRUSTEES. Oversight Improved, But Extent Of Trustee Fraud Is Unknown." GAO/GGD-83-54, January 1993. The GAO further reports that bankruptcy filings have increased 109 percent since 1986. Id. at 1. For every bankruptcy case filed, there is at least one trustee appointed and usually several creditors in each case. Hence, these facts multiplied by the predicted number of bankruptcy filings indicates that 11 U.S.C. §350(a) affects millions of persons and entities every year. The specialty and importance of the question what constitutes the closing of a bankruptcy case is found in the increasing number of bankruptcy filings and the ever increasing numbers of those affected by §350(a).

The Wades argue that the language of §350(a) is plain and simple. In its entirety, §350(a) states: "After an estate is fully administered and the court has discharged the trustee, the court shall close the case." The Wades argue that §350(a) sets forth <u>two</u> prerequisite conditions that should be met in order to legally close a Chapter 7 bankruptcy case. First, the estate must be fully administered; second the trustee discharged, only then should the bankruptcy case be closed. In this Chapter 7 bankruptcy the case was closed by the January 17 order, but the trustee was not discharged until over a year later by the May 30 order.

The obvious result of closing a bankruptcy case and discharging the trustee in separate orders and at different times is that jurisdiction of the courts is affected. This is not a

common sense result. The 7th Circuit recognized this possibility and its peculiar effect on the jurisdiction of the courts. App. 11.

If §350(a) is given a plain meaning, presumably only a single order closing the bankruptcy case is rendered, thus eliminating the "guess work" for taking appeal for which the 7th Circuit expressed its concern. Id.

In regards to §350(a), the federal courts are in a desperate need for guidance from this Court in the form of a conclusive decision concerning what constitutes the closing of a Chapter 7 bankruptcy case under §350(a). A conclusive decision from this Court would eliminate the inconsistencies, conflicts and confusion between the courts concerning the timing of the closing of bankruptcy cases. A conclusive decision by this Court would finally settle this

troubling question of federal law. The ever increasing numbers of bankruptcy filings each year, coupled with the uncertainty of what constitutes the closing of a bankruptcy case, supra., demonstrates the specialty and importance of why this Court should exercise its discretion to review the opinion of the 7th Circuit.

II.

THE OPINION OF THE 7TH CIRCUIT IS A FAR DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF BANKRUPTCY PROCEEDINGS THAT A TRUSTEE SHALL FILE A FINAL REPORT AND BE ACCOUNTABLE FOR ESTATE PROPERTY.

The 7th Circuit's opinion affirmed the district court's May 30 order discharging trustee Shook from his duties. App. 12. Also in its opinion the court of appeals expressly determined that trustee Shook did not file a final report, and that

trustee Hopper filed an "interim" report. App. 10. The decision to affirm the discharge of a Chapter 7 trustee who has not filed a final report is a far departure from the accepted and usual course in Chapter 7 bankruptcy proceedings.

Title 11 U.S.C. §709(9) provides that "[T]he trustee shall- make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

In its opinion the court of appeals applied Rule B-2015(c) and Rule B-2023 of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana (hereafter cited as "S.D.Ind. L.R.___"). S.D.Ind. L.R B-2025 and S.D.Ind. L.R. B-2023 were abrogated October 2, 1992. Notwithstanding the abrogated local rules relied on in the Opinion, 11 U.S.C. §704(9) is not

abrogated or repealed, and the decision of the court of appeals to affirm the order discharging a Chapter 7 trustee who has failed to file a final report is a far departure from the accepted and usual course in a Chapter 7 bankruptcy proceeding. This departure is a substantial one which calls for the exercise of this Court's power of supervision.

The Court's supervision in this case is necessary because the court of appeals has rendered and published an opinion that changes 11 U.S.C. §704(9) which may be unlimitedly cited as precedent. Circuit Rule 53 of the United States Court of Appeals for the Seventh Circuit (hereafter cited as "C.R. __"). The opinion of the court of appeals will allow Chapter 7 trustees to be discharged from their duties without having filed a final report.

The combination of the decision to affirm the May 30 order discharging Shook from his duties and simultaneously finding that Shook did not file a final report is a highly unusual to say the least. More unusual however is the fact that in this case, the court of appeals did not address the issue of missing and unaccounted for estate property and the "privileges" asserted by the trustees to withhold information concerning $23,000.00 in scheduled estate property. See, Appellants' Brief at 22-24. See also, Appellants' Petition for Rehearing at 3-4 (hereafter cited as "Pet. Reh.__ ").

If read together, the facts that (1) trustee Shook was discharged from his duties without filing a final report; (2) estate property is missing and unaccounted for; and (3) the trustees assert a "privilege" to withhold information which accounts for $23,000.00 in scheduled

estate property, all indicate a clear departure from 11 U.S.C. §704(9). However, to what extent this departure has been sanctioned by the court of appeals is deserving of further discussion.

Title U.S.C. §704(9) applies to all bankruptcy trustees. The U.S. Bankruptcy Court for the Eastern District of Michigan succinctly stated that "...Section 704(9) is addressed to all trustees, not only to those who mishandle their responsibilities." In Re: Grand Jury Proceedings and Jim's Garage, Inc., 119 B.R. 945, 954 (E.D.Mich.-1990). The duty of the trustee to file a final report is the well-established accepted and usual course in a bankruptcy proceeding. See, e.g., O'Conor v. Suseri, 184 F. 712 (3rd Cir.-1911); In Re Carr, 116 F. 556 (D.C.N.C.-1902).

In the case of Jim's Garage, Inc., the court construed §704(9) to mean "that any

person who undertakes the duties of trustee--no matter how short the duration of his tenure--must file an accounting respecting what he did with that office," at 955. The court recognized the intent of Congress that bankruptcy trustees shall be accountable, this is so even in the instance where a successor trustee is appointed. Id.

The clear intent of Congress in requiring a trustee's final report and its filing is to insure the accountability of the trustee [11 U.S.C. §704(2)], and to provide a public record of the estate's administration [11 U.S.C. §704(9)]. Generally, the accountability of the trustee is well-established. Re Reinboth, 157 F. 672 (2nd. Cir.-1907); Re Kuhn Brothers, 234 F. 277 (7th Cir.-1916), cert. den., 242 U.S. 629, 61 L.Ed. 536, 37 S.Ct. 14.

In this case the court of appeals saw its duty as -

"Our duty is to determine whether the January order was final and appealable. If the January order was appealable, the Wades filed their notice of appeal too late and are barred from challenging the core bankruptcy issues. If the January order was not final and appealable, we did not have jurisdiction over the first appeal, and the Wades may presumably raise the core bankruptcy issues at this juncture." App. 6.

The court of appeals then went on to determine that "[T]he January 17 order [closing the bankruptcy case], resolved the issues of the core proceedings and the parties and the court treated it as final and appealable." (emphasis added), App. 12. The January 17 order did not resolve the issues on the merits concerning the trustees' asserted "privilege," and missing and unaccounted for estate property which is clear from only a cursorial reading of the order. App. 18-25. Nor were the issues resolved on the merits on appeal from the January 17 order because the court of appeals dismissed the appeal as untimely. App. 4.

The Wades contend the duty of the court of appeals in this case is to follow the accepted and usual course for Chapter 7 bankruptcy proceedings. On petition for rehearing, the Wades argued that the court of appeals overlooked or misapprehended two critical facts in this case: (1) "The district court closed the bankruptcy case and discharged the trustee without a full and complete accounting of items of property listed on the debtors' schedules," and (2) "The district court closed the bankruptcy case and discharged the trustee without resolving the remaining substantial and significant contested issues." Pet. Reh. 1. The court of appeals denied the petition for rehearing without opinion. App. 26.

As to the absence of a full and complete accounting, the Wades showed that trustees Hopper and Shook asserted a "privilege" and refused to furnish their

trustee's records which account for $23,000.00 in estate property listed in the company's schedules. Pet. Reh. 3. The Wades argued that the fact Hopper and Shook refused to furnish the requested information was proof that a full and complete accounting of the $23,000.00 had not been made. Id.

As to the unresolved remaining issues, the district court denied the Wades' an extension of time in which to file objections to trustee Shook's discharge. App. 15. The court of appeals affirmed the district court's order and decided the Wades cannot raise as objections to the May 30 order underlying matters. The underlying matters are the "privilege" the trustees assert and missing and unaccounted for estate property. Pet. Reh. at 8-9.

The court of appeals did not address the propriety of the "privilege" asserted

by Hopper and Shook to withhold the information, nor did the court of appeals address the unresolved issue of missing and unaccounted for estate property. Instead, the court of appeals addressed the question of whether the Wades are barred from raising the issues to the May 30 order discharging trustee Shook from his duties. App. 6.

When read together, the facts of this case and the opinion of the court of appeals constitute a far departure from the accepted and usual course for a Chapter 7 bankruptcy case calling for the exercise of this Court's supervisory power. Otherwise, if the opinion of the court of appeals is left to stand, then Chapter 7 trustees are henceforth licensed to walk away from their statutory duty to account and file a final report of their administration pursuant to the opinion of the court of appeals and C.R. 53(b).

III.

THE PETITIONERS AS INDIVIDUAL DEBTORS IN BANKRUPTCY ARE ENTITLED TO BE DISCHARGED IN THIS BANKRUPTCY PROCEEDING.

On appeal, the Wades argued that as individual debtors, they are entitled to be discharged under 11 U.S.C. §727 which provides the court shall grant the debtor a discharge, unless one of the exceptions set forth in §727 exists. In this case, the record does not reflect any reason why the Wades as individuals should not be granted a discharge, however, the district court did not grant the Wades a discharge. The Wades asked the court of appeals to take this issue up on appeal from the May 30 order. See, Appellants' Brief at 43. The court of appeals did not consider the issue.

This Court is the court of last resort for the Wades to obtain a discharge in

this bankruptcy case for which they are entitled pursuant to 11 U.S.C. §727, or to know the reason why they are not discharged.

RELIEF REQUESTED

The Wades respectfully pray for this Court to grant this Petition for Writ of Certiorari, and:

1. For this Court to consider the question "What constitutes the closing of a Chapter 7 bankruptcy case under 11 U.S.C. §350(a)?," and for this Court to conclusively decide that the courts cannot close a Chapter 7 bankruptcy case before a full administration of the estate and discharge of the trustee occurs.

2. For this Court to exercise its power of supervision to reverse the May 30 order discharging trustee Shook from his duties and remand this case to the

district court with instructions that trustee Shook shall file a final report.

3. For this Court to exercise its power of supervision and remand this case to the district court with instructions to determine if the Wades are entitled to a discharge from this bankruptcy.

4. And for such other and further relief deemed just and proper in the premises.

Respectfully Submitted By:

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APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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In the
United States Court of Appeals
For the Seventh Circuit

No. 91-2536

IN THE MATTER OF:
ULYSSUS GEORGE WADE,
JOYCE WADE, and
U.G. WADE TRUCKING, INC.,

Debtors-Appellants.

Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division.
No. 88-1417-C—**Larry J. McKinney**, *Judge*.

SUBMITTED MAY 19, 1992[1]—DECIDED APRIL 14, 1993

Before CUMMINGS and CUDAHY, *Circuit Judges*, and WOOD, JR., *Senior Circuit Judge*.

CUDAHY, *Circuit Judge*. Ulyssus George Wade and Joyce Wade owned U.G. Wade Trucking, Inc. In 1985, they filed for Chapter 7 bankruptcy protection, 11 U.S.C. § 701, for both their personal and corporate holdings. They appeal from an order entered in those proceedings.

[1] After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." *See* Fed. R. App. P. 34(a); Cir. R. 34(f). The appellants requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

I.

The Wades' bankruptcy litigation has been long and rife with allegations of wrongdoing: the Wades have sued two judges, two trustees and their own attorney. Those lawsuits have spawned more than a dozen appeals to this court from both core and noncore proceedings. Although originally assigned to the bankruptcy court, the present case was later transferred to the United States District Court. On January 4 and 5, 1990, the district court held hearings with respect, *inter alia*, to whether the bankruptcy estate was ready to be closed. The debtors raised four objections, although only one actually related to the closing. That objection involved whether the court would make a finding stating that the trustee had "faithfully discharged" his duties and whether such a finding would collaterally estop future litigation against both the original and the successor trustee. The district court assured counsel that it would make no factual findings with respect to the trustees' performance. The debtors had no further objection to the closing. The parties agreed that the estate had been fully administered.

At the hearings on January 4 and 5, the debtors stated that the notice of a "request to close" had never been mailed, and that the question of the request to close had never been resolved at a hearing. In their appellate brief, however, the debtors state that the request to close and their objections to it had been discussed on January 4, 1990. The debtor-appellants argue, on the other hand, that at no time did the district judge ask them whether they were ready to proceed to close and whether they had any objections to the request to close.

The trustee's signed request to close was filed on November 6, 1989. The name of Mark Garringer, the debtors' attorney, appears on the distribution list. The district court docket reflects that notice to submit applications for fees and notice of the trustee's application to abandon, of the application for approval of agreed entry on distribution of proceeds and of the hearing set for January 4, 1990

was sent. A review of the transcripts of the January 4 hearing reveals the following:

> THE COURT: Good morning. We have before us several matters this morning. We have the final application to abandon and request to close, ... I would like to deal with all of these matters this morning. Does that meet with everybody's approval?
>
> * * * * *
>
> GARRINGER: My question goes to the application for fees.
>
> THE COURT: Those are a part of the request to close, are they not?
>
> TRUSTEE: That's correct, Your Honor, and that was noticed for today by this court.
>
> THE COURT: Right. We will deal with that. Now, before we begin on those, there were some matters filed just yesterday regarding subpoenas, and I have an entry to give you on miscellaneous motions. . . .
>
> I thought we would begin right with the application to abandon and the request to close and let the Trustee begin and then hear your objections and proceed down the list.
>
> * * * * *
>
> So, let's proceed with your application to abandon and your request to close.

The hearing consumed the remainder of the day and part of the following day. At the end of the hearing, Garringer discussed closing. Garringer stated that if the court did not use the "faithfully discharged" language with respect to the trustees' duties, then "[i]f tomorrow the court enters an order . . . saying the estate is fully administered and this case is closed, we have no problem with that." Shortly after, he stated that, "we would have no objection to an order closing this case."

On January 17, 1990, the district court issued an order resolving a number of key issues: 1) the distribution of proceeds from the account receivable held by the estate; 2) the payment of the statutory trustee fee to the original trustee, Edward Hopper, II; 3) the statutory trustee fee to the successor trustee, Neil Shook; 4) the payment of attorneys fees and expenses to a law firm; 5) the denial of fees of the debtors' attorney; and 6) the motions for sanctions against the debtors. The order unequivocally stated that the bankruptcy estate was closed.

The Wades were then tardy in filing their notice of appeal. The case was returned to the district court to determine if the late filing was excusable. The district court found no excuse for the late filing, and this court dismissed the appeal for lack of jurisdiction. During this period, we issued an order conveying our displeasure with the manner in which the Wades had conducted the litigation. Sometime following that order, Garringer was dropped as attorney, leaving the debtors to proceed *pro se*. Their continuing attempts to appeal were unsuccessful. The Wades filed a motion to reopen within three months of the January 17 order. This motion was later withdrawn. On April 4, 1990, Trustee Shook filed a motion submitting his supplemental final report and asking to be discharged from his bond. In March 1991, the Wades filed a second motion to reopen because they entered into a dispute with the Internal Revenue Service. As is apparent from their requests to reopen and attempt to appeal, the Wades considered the order of January 17 to be final. On May 30, 1991, the district court entered an order denying the Wades' motion to reopen, and granting the trustee's motion to be released from bond and discharged of his duties. The question of sanctions was deferred to the close of other, noncore, proceedings. The Wades, through the attorney they had "fired" and apparently "rehired", appealed the order of May 30 within the prescribed time period. This appeal is now before us.

In their brief, the Wades do not challenge the substance of the two matters covered in the May order from which

they are appealing. Instead, the Wades challenge the resolution of the issues in the core proceedings, alleging judicial error and errors in administration of the estate. The trustee argues that the Wades cannot attack the resolution of the core bankruptcy proceedings but only the decisions contained in the May order. For this reason, the trustee does not respond to the appellants' substantive arguments. Not until their reply brief do the Wades contend that the bankruptcy was not finally closed until the trustee was discharged by the May order, and that therefore their appeal of the May order brings up for review the core proceedings.

To support their argument that the bankruptcy was not closed and that therefore the January order was not final, the Wades rely on a letter that the trustee mailed to them after the hearing. In a letter dated January 16, 1990, the trustee asked for the Wades' signatures on some documents, and commented about trying quickly to close the estate. The letter said: "As you have indicated, you wish this estate to be closed as quickly as possible, and the filing of these returns is a necessary step towards that end." The Wades interpret this statement as evidence that the January hearings did not close the estate. The letter, however, was written one day prior to the January order that pronounced the estate closed. The appellants also contend that because the supplemental final report had not been approved by the district court, the estate was not finally closed on January 17. If the estate was still open after January 17, the Wades argue, the core bankruptcy issues are brought up for appeal by the filing of a notice of appeal from the May order.

II.

This court considers three sorts of bankruptcy appeals: those arising from final orders, from interlocutory orders and from collateral orders. *In re Klein*, 940 F.2d 1075, 1077 (7th Cir. 1991). "[C]ertain bankruptcy orders may be deemed final before the estate is entirely closed." *In re*

Official Comm. of Unsecured Creditors, 943 F.2d 752, 755 (7th Cir. 1991). That species of finality is linked to our decision in this case.

A final order in a bankruptcy case, is one that resolves all contested issues on the merits and leaves only the distribution of the estate assets to be completed. *In re Wagner*, 808 F.2d 542, 544-45 (7th Cir. 1986). This is a less stringent interpretation of finality than that employed in most civil lawsuits and is often applied to adversarial proceedings which are related to the core bankruptcy proceedings. *See, e.g., In re Kilgus*, 811 F.2d 1112, 1116 (7th Cir. 1987). Several types of bankruptcy orders are final and appealable, for example, orders allowing or denying claims; orders denying relief from a stay; decisions involving property ownership; exemptions; sanctions; appointments of trustees; judicial sales orders; and confirmation of a bankruptcy plan. *See e.g.*, Ginsberg, *Bankruptcy: Text, Statutes, Rules*, § 1.04(b) (2nd Ed. 1991 Supp.).

Our duty is to determine whether the January order was final and appealable. If the January order was appealable, the Wades filed their notice of appeal too late and are barred from challenging the core bankruptcy issues. If the January order was not final and appealable, we did not have jurisdiction over the first appeal, and the Wades may presumably raise the core bankruptcy issues at this juncture.

The timing of a bankruptcy's closing has been called a "nebulous" concept. *In Re Korvettes, Inc.*, 67 B.R. 730, 732 (S.D.N.Y. 1986). We shall try to clarify the issue at least in part. Section 350(a) of the bankruptcy code states that "After an estate is fully administered and the court has discharged the trustee, the court shall close the case." 11 U.S.C. § 350(a). A bankruptcy rule uses nearly the same language in restating this proposition. Fed. R. Bankruptcy P. 5009. The language of Section 350(a) is conjunctive. The estate must be fully administered *and* the trustee must be discharged. This language indicates that without formally discharging the trustee, the bankrupt estate may not be legally closed. The statute continues, stating that

the court *shall* close the case at the time of formal discharge. The statute does not, however, indicate whether the court *may* close the case at an earlier time. No language forecloses this opportunity, but to determine if this is permissible, we shall consider the policies affecting the closing of a bankruptcy estate and the trustee's duties.

A trustee is charged with the duty of closing the estate as expeditiously as may be compatible with the best interests of the parties. 11 U.S.C. § 704(1). A trustee must "fully administer" creditors' claims against the bankrupt estate. The trustee controls the assets of the estate, which will be applied to satisfy these claims to the extent assets exist. The remaining property of the debtor which is of no value or is exempt from administration is "abandoned". 11 U.S.C. § 554. "Full administration" has not been conclusively defined.[2] A Chapter 7 estate may be "fully ad-

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[2] In Chapter 11 reorganizations, a court has defined "fully administered" as indicating the point when the estate reaches substantial consummation as defined by section 1101(2) of the bankruptcy code. Section 1101(2) states that substantial consummation is reached when, *inter alia*, distribution has *commenced*, but not necessarily been completed. At that point, a Chapter 11 final decree may be issued. *In re BankEast Corp.*, 132 B.R. 665 (Bankr., D.N.H. 1991). One court, when addressing a Chapter 11 situation, listed events to be considered in determining if full administration has occurred. Some of these events may be analogous to chapter 7 proceedings. They are 1) when the order confirming the plan has become final, 2) when deposits have been distributed, 3) when payments under the plan have commenced and 4) when all motions, contested matters, and adversary proceedings have been resolved. When these events occur, substantial consummation has been reached, and the final decree may issue even though the plan has not been carried out in every detail. *In re Mold Makers, Inc.*, 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1990). Alternatively, other cases have inverted the analysis by defining substantial consummation in terms of full administration. The meaning of full administration as used in section 350(a) is not clear. *See In re Hunt Trust Estate*, 92 B.R. 172, 181 (Bankr. N.D. Tx. 1988); *In re Placid Oil Co.*, 92 B.R. 183, 200 (Bankr. N.D. Tx. 1988). The concepts of full administration and substantial consummation seem to be, however, distinct rather than mutually defining. *See In re Tennessee Wheel & Rubber Co.*, 64 B.R. 721, 727 n.6 (Bankr. M.D. Tenn. 1986).

ministered" before some ministerial tasks are completed. In the judicial context, "ministerial" refers to purely mechanical tasks that presumably do not affect issues on appeal or result in new appeals. *In re Excello Press, Inc.*, 967 F.2d 1109 (7th Cir. 1992) (cases remanded to a bankruptcy judge for computational purposes only); *In re Fox*, 762 F.2d 54, 55 (7th Cir. 1985). These same principles apply to ministerial tasks required of bankruptcy trustees. In *In re J.W. Knapp Co.*, 930 F.2d 386, 388 (4th Cir. 1991), the Fourth Circuit made a distinction between the legal functions and the ministerial responsibilities of bankruptcy trustees. A ministerial task is one that does not rely on legal understanding or does not involve complex legal issues. *Id.*

Chapter 7 cases come to an end in a final report indicating the distribution of proceeds from liquidated assets. The trustee's final report in Chapter 7 cases in the Southern District of Indiana, required by local rule B-2015(c), must contain 12 pieces of information. Local Bankruptcy Rule S.D. Ind. B-2023.[3] Among these are the total receipts

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[3] Local rule B-2023 states the following:

(a) *Final Report.* The Chapter 7 trustee's final report shall be a verified pleading, and shall contain the following information in the following order:

(1) date of trustee's qualification and amount of trustee's bond;

(2) statement of the services performed;

(3) total receipts and disbursements;

(4) total disbursements made in continuing the business of the debtor;

(5) a statement that all assets have been reduced to cash and that the estate is ready to be closed;

(6) a statement detailing the items of property listed in the debtor's schedules, including accounts receivable and choses in action, and accounting for same;

(7) a statement that the trustee has examined the amount paid prior to the filing of the petition to an attorney by the

(Footnote continued on following page)

and disbursements of the estate made in continuing the business of the debtor and a statement by the trustee that these disbursements were properly made and reasonable in amount. Local Bankruptcy Rule S.D. Ind. B-2023(a). The supplemental final report required in the Southern District of Indiana records the receipts and disbursements which were approved as included in the final report as well as the final bank statement of the trustee's account. Local Bankruptcy Rule S.D. Ind. B-2023(d). The Bankruptcy Code provides that the trustee's duties under the law end with the filing of the final report *and* the filing of the final account of the administration of the estate. 11 U.S.C. § 704(9). At a minimum, full administration encompasses the filing of the final report. Even if the final account of the administration can be extracted from various papers filed with the court, this final account is not enough without the trustee's final report.

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[3] *continued*

debtor for services rendered or to be rendered in connection with the bankruptcy, setting forth the amount of such payment and whether the fee is reasonable, and if unreasonable, the proceedings taken thereon;

(8) a statement of the compensation sought by the trustee's attorneys and accountants, together with such comments or recommendations as the trustee deems appropriate;

(9) a statement that all disbursements made by the trustee were reasonable in amount and properly made;

(10) a statement that all filed claims have been examined and should be allowed for the amounts therein claimed or in such other amounts as fixed by order;

(11) the compensation requested by the trustee and the amount of any previous allowance;

(12) the following documents: a current bank statement; Schedule A listing cash received, dates of receipt, and total of receipts; Schedule B listing disbursements, date and amount of each disbursement, purpose of each disbursement, and total of disbursements; and Schedule C, a statement of the assets which came into the trustee's possession and the disposition thereof.

Hopper, the first trustee here, filed a "final report" that accounted for the assets that were in his possession or were disposed of while he was trustee. This "final report" did not contain the statement required by S.D. Indiana Bank. R. 2303(5) to the effect that all assets had been reduced to cash and the estate was ready to be closed. In effect, this "final report" was final only with respect to the role Hopper played in the bankruptcy estate. In reality the document was not a "final", but rather an "interim", report, a position illuminated by Hopper in a later filing. Thus, Shook, the successor trustee, needed to file a final report prior to the closing. We find no docket entry that a final report was filed, nor do we find the report itself in the record. Instead, we find the successor trustee's accounting of the former trustee's administration, as well as an application to abandon certain property, an application for compensation and reimbursement and the request to close. The aggregate of these documents does not provide the information required pursuant to local bankruptcy rules to comprise the final report. Nor does the required information appear in the form stipulated by Rule B-2023. Because no final report was filed, therefore, the trustee's duties had not been fully carried out. In conjunction with the fact that the trustee had not been discharged and thereby relieved of any unfulfilled duties, it appears that the powers of the trustee had not been fully exercised. Thus, the district court's January 17 order closing the estate was entered somewhat prematurely—before all requisite duties had been performed.

The point is, however, that, whether or not the order was entered prematurely, it was entered and it *did* purport to be final. In the absence of more material errors than appear here, the order of a district court that is final in form and is, to all appearance, proper, will be taken at face value and will be regarded as final for jurisdictional purposes. In this case, not only did the court intend the order to be final, and label it as such, but the parties regarded it as final—at least until one of them developed an interest in having a later date to appeal. The hearing of January 4 and 5 resolved all the disputes arising from

the core proceedings and the parties agreed to close the bankruptcy. As a result, the order of January 17 closing the estate was issued. At the time that order was issued, the only duty of the trustee that remained was the filing of some ministerial paperwork. Because Hopper filed a "final" report, there remained little for Shook to do. Compiling the documents necessary for the second final report did not, in these circumstances, require any special legal understanding. We certainly do not intend to diminish the importance of a trustee's final report and the district court erred in entering the order of January 17 without such a report; but that is only to say that the order was entered somewhat prematurely. Its finality and appealability were not affected. Were we to hold that such an order was not appealable because of some relatively minor deficiency in the trustee's performance—at least in circumstances no more egregious than those before us—we would deprive appellate jurisdiction of all certainty and make the time for appeal subject to guess work about the adequacy and completeness of the reporting.

Our view of the jurisdictional problem is consistent with the Wades' earlier view. The appellants proceeded as if the estate were closed, acknowledged as much and filed an appeal to this court. In addition, they made motions twice asking the district court to reopen the estate. The trustee and other interested parties joined in the appellate process, as well as responded to the motion to reopen. These proceedings took considerable time, both of the parties and of the courts. More than one set of briefs was submitted, numerous pleadings were filed and eleven orders were issued by this court. Without considering the merits, we dismissed the appeal as untimely. Obviously, all parties were proceeding as if the district court decision was final. *Cf. In re Xonics, Inc.*, 813 F.2d 127, 129-30 (7th Cir. 1987) (issues were resolved in the district court order never to be revisited and the failure to appeal could bar closing the estate).

This case differs from *Xonics* because the order here purported to close the estate, while in *Xonics* the debated

order merely addressed a lesser issue arising from the core proceeding. Nonetheless, the *Xonics* reasoning applies here. The January 17 order resolved the issues of the core proceedings and the parties and the court treated it as final and appealable. If the order was entered in error, it is error that can be corrected on appeal; it is not error that deprives the appellate court of jurisdiction.

One of the goals of bankruptcy litigation is to achieve expedition in the proceedings. *See* 2 *Collier on Bankruptcy* ¶ 3350.01 at p. 363-1; 11 U.S.C. § 704(1). This goal is certainly advanced by taking formally appealable orders at face value and not giving inappropriate weight to non-jurisdictional objections advanced for the purpose of furnishing litigants with a second bite of the apple. In addition, the propriety of bankruptcy appeals should not be affected by later steps to complete distribution.

With respect to the denial of the Wades' motion in the district court to reopen the bankruptcy case, the same arguments were made as apply to the January 17 order. The decision denying reopening was within the sound discretion of the district court. *In re Shondel*, 950 F.2d 1301, 1304 (7th Cir. 1991); 11 U.S.C. § 350(b). We note that there were no assets requiring administration, the debtor is not entitled to relief and no "other cause" has been shown. Although the order closing the bankruptcy was premature, that error was corrected in subsequent proceedings. All that remained for the trustee were ministerial tasks. Therefore, the Wades cannot succeed in their attempts to reopen the bankruptcy case. Nor can they raise as objections to the order of May 30, 1991, underlying matters which they attempt to call up on this appeal.

III.

For the foregoing reasons, the district court decision is AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In Re:	)	
ULYSSUS GEORGE and	)	
JOYCE WADE,	)	CAUSE NO. IP88-1417-C
U.G. WADE TRUCKING, INC.,	)	
Debtors.	)	

ENTRY AND ORDER

On February 4, 1991, the Seventh Circuit Court of Appeals dismissed the appeal in this case for lack of jurisdiction, following this Court's determination that no excusable neglect existed for the appellants' late filing of their notice of appeal. Thus, this case has reached its conclusion.[1] However, a few miscellaneous motions require attention before the final chapter of this bankruptcy case is concluded.

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[1] The record reflects the debtors have filed a writ of certiorari to the United States Supreme Court.

A. Debtors' Motion to Reopen

The debtors have filed a motion to reopen this bankruptcy case based on a dispute involving pre-petition taxes. Though a bankruptcy case may be reopened, 11 U.S.C. § 350(b), doing so in the case at bar would not be a proper exercise of this Court's discretion. Objections to the motion to reopen have been filed, and rightly so. This bankruptcy case was closed by this Court pursuant to an order of January 17, 1990. The appeal has been dismissed. The motion to reopen is premised upon a dispute involving pre-petition taxes. If the debtors wish to pursue this dispute, they may proceed in the United States Tax Courts. Accordingly, the motion to reopen is denied.

B. Trustee's Motion to be Released From Bond

The trustee has filed a supplemental final report, and a motion to be relieved

of his responsibilities under his bond. A hearing was held January 4 and 5, 1990, on the trustee's request to close, and the trustee's supplemental final report reflects that the trustee has made all disbursements as Ordered by this Court. The debtors object to the trustee's motion, and request additional time to respond thereto. However, the Court finds no basis for objecting to the trustee's motion, and the debtors' request is denied.

Accordingly, the trustee's final report is hereby approved, the trustee is released from his duties and discharged from his trust, and the trustee's bond is hereby released.

C. Merchants' Motion for Sanctions

Merchants National Bank and Trust Company of Indianapolis ("Merchants"), has filed a motion for sanctions against Mark Garringer, former attorney for the

debtors.[2] The motion asks this Court to-

> enter an order enjoining Mark Garringer from filing any pleading, motion, or other paper in this Court in this matter or in any other proceeding related to this matter, without first obtaining leave of this Court (other than motions or papers related to an appeal of this order), and further ordering Mark Garringer to pay monetary sanctions in an amount to be determined by this Court.

Merchants filed a separate sanctions motion in this cause against Garringer and the debtors on June 8, 1989, which was transferred to IP-88-65-C. This Court has previously ruled that motions for sanctions will be held in abeyance and considered at the conclusion of IP-88-65-C, so as to first proceed to the merits of each remaining case. (See, Order of August 28, 1989, at 2).

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[2] On September 17, 1990, Garringer filed a "Notice of Withdrawal" with this Court in the related case IP 88-65-C. The debtors have been proceeding pro se ever since. Garringer's notice failed to comply with Local Rule 2, which requires counsel desiring to withdraw to file a petition requesting leave to do so, unless the withdrawal of appearance is accompanied by the appearance of other counsel. Moreover, the notice of withdrawal did not state that it related to each of the debtors' remaining cases, though by implication it did.

Accordingly, Merchants sanctions motion of January 22, 1991, also is hereby Ordered transferred to IP-88-65-C, to be considered in connection with all other sanctions motions filed in these proceedings at the conclusion of IP-88-65-C. Given that this bankruptcy was closed pursuant to an Order of January 17, 1990, and that all motions have been addressed, the Court will not entertain any additional motions as they relate to Cause No. IP 88-1417. IT IS SO ORDERED this 30 day of May, 1991.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)
The Bankruptcy of	)Dist.Ct.No. IP88-1417-C
ULYSSUS GEORGE and	)
JOYCE WADE, U.G. WADE	)Bankr.Ct.No. IP85-6002
TRUCKING, INC.,	) (consolidated)
Debtors.	)

ENTRY FOR JANUARY 17, 1990

This cause comes before the Court on various motions of the parties. On January 4 and 5, 1990, the Court heard evidence in support of and in opposition to the motions. After hearing the evidence and reviewing the law, the Court now makes the following rulings. The Clerk of this Court shall close this file accordingly.

1. Trustee's Application to Abandon

In this motion the successor Trustee seeks to abandon all remaining assets of the estate as set forth in the Application because they are burdensome and/or inconsequential to the estate. There being no objection[1] and the Application

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[1] Merchants did object to turning the records over to the debtors. However, the Court finds it unnecessary for the Trustee to retain the records and trusts that the debtors will preserve all such records during the pendency of related claims.

otherwise appearing proper, the Court APPROVES the Application to Abandon.

2. Application For Approval of Agreed Entry on Distribution of Proceeds from Accounts Receivable

Despite the debtors' objection to this Application, the evidence adduced at the hearing showed that the Application is proper and should be approved. It was not shown that the amounts of principal and interest due and owing from the debtors as calculated by Merchants were improper, nor was it shown that Merchants collected any accounts receivable or otherwise proceeded improperly. Accordingly, the Court APPROVES the Application and ORDERS that of the $8,872.78 in proceeds of accounts receivable collected by the debtors' bankruptcy estate, the sum of $5,915.78 shall be paid to the Merchants as part of its allowed secured claim in the debtors' accounts receivable and that the

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remainder, a sum equal to $2,957.00, shall be retained by the bankruptcy estate pursuant to 11 U.S.C. §506(c) and that all interest earned on the funds as of the date of distribution be distributed to Merchants and the debtors' bankruptcy estate proportionately (i.e., two-thirds to Merchants and one-third to the bankruptcy estate).

3. Former Trustee Hopper's Application for Statutory Trustee Fee

Pursuant to 11 U.S.C. §326, former Trustee Hopper seeks the statutory trustee's fee for services rendered as Trustee in this action. The debtors having failed to show any grounds for denying payment of the statutory fee to the former Trustee, the Court finds the Application proper and APPROVES it.[2] For Trustee

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[2] For similar reasons, the Court DENIES the debtors' Action for Recalcitrance filed on January 3, 1989. That motion was subsumed in the two hearings concerning former Trustee Hopper's activities and has been mooted accordingly. The Court notes that while the debtors complain that,

Hopper shall be paid the statutory maximum of $852.62. The Court emphasizes, however, that this ruling shall have no res judicata or collateral estoppel effect on the other related litigation brought by the Wades against former Trustee Hopper, for the issues raised at this juncture of the bankruptcy proceedings are not substantially similar to those raised in IP88-65-C.

4. Trustee Shook's Application for Trustee's Fees:

Pursuant to §326, Trustee Shook seeks the statutory trustee fee. The Court finds the Application proper in all respects and APPROVES it accordingly. Trustee Shook is

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they have not had the opportunity to depose former Trustee Hopper, they have on two separate occasions in this bankruptcy proceeding had Mr. Hopper on the stand and have been availed the opportunity to examine him without the expense of a deposition. Whether such a deposition shall be allowed in the main district court action (IP88-65-C) is another matter; in this bankruptcy proceeding, there is no reason for Mr. Hopper to be subjected to further interrogation.

entitled to the statutory fee of $310.87.

5. Application of Rubin & Levin, P.C. for Attorneys Fees and Expenses as Attorney for Trustee Shook:

In this application the law firm of Rubin & Levin seeks compensation for the substantial hours devoted by its attorneys as counsel for successor Trustee Shook in this bankruptcy proceeding. Given the nature of this particular proceeding and in light of the U.S. Trustee's certification, the Court finds that the hours listed should be approved, with a downward modification of six hours that, as Trustee Shook has stated, are more appropriately considered Trustee's time. Accordingly, the Court finds that 183.65 hours of Neil Shook's time shall be compensated for as attorney time (rather than the 189.65 originally listed), and that the application shall be approved in all other respects. Accordingly, Rubin &

Levin shall be awarded attorney fees in the sum of $29,411.025, and expenses in the sum of $465.88.

6. Attorney Garringer's Application for Fees:

While acting as attorney for the debtors, attorney Mark Garringer spent one half hour in collecting the sum of $2,176.70 from Zondon Express. Mr. Garringer subsequently turned that sum over to the Trustee as is required by bankruptcy law. Mr. Garringer now seeks to collect one-third of that sum as a contingency fee for his collection efforts. Mr. Garringer never sought or obtained court approval to serve as counsel for the trustee.

The Court now DENIES Mr. Garringer's Application for the reason that under 11 U.S.C. §521, the debtors had the legal duty to turn over any and all property of the estate to the trustee. As attorney for

the debtors, Mr. Garringer had the same duty to surrender all property of the estate, and thus it is inappropriate for him to be compensated for something which the Code already required him to do.

7. Joint Motion for Sanctions:

In this motion for sanctions filed by several interested parties on June 8, 1989, sanctions are requested for the debtors' actions regarding hearings held in this proceeding on January 13, 1989, and April 13, 1989, to determine whether the Honorable Sarah Evans Barker presided over a meeting of creditors on February 25, 1986, as alleged by the debtors. The undersigned has previously ruled that motions for sanctions will be considered at the conclusion of these proceedings. While the Court could consider the joint motion at this time, the Court prefers to hold this motion in abeyance and consider it at the conclusion of IP88-65-C.

Accordingly, the Motion for Sanction is HELD IN ABEYANCE and will be considered at the conclusion of IP88-65-C.

8. Request to Close:

There being no further business to conduct in this proceeding, and the request to close having been certified by the U.S. Trustee, the Court now ORDERS this bankruptcy proceeding to be closed. The Clerk of this Court shall close this file accordingly.

IT IS SO ORDERED THIS 17th day of January, 1990.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

May 21, 1993

IN THE MATTER OF: ULYSSUS GEORGE WADE, JOYCE WADE, AND U.G. WADE TRUCKING, INC.,	)Appeal from the United)States District Court)for the Southern)District of Indiana,)Indianapolis Division.
Debtors-Appellants.	)No. 88-1417-C)Larry J. McKinney,
No. 91-2536	)Judge.

ORDER

On consideration of the petition for rehearing filed in the above-captioned case, all of the judges on the original panel have voted to deny. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and is hereby, DENIED.